

BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION

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COMMISSION

2014 MAY 14 AM 10:17

OFFICE OF GENERAL
COUNSEL

New Hampshire Republican Party
10 Water Street
Concord, NH 03301

v.

MUR No. 6821

Jeanne Shaheen
520 Hart Senate Office Building
Washington, DC 20510

Shaheen for Senate
105 North State Street
Concord, NH 03301

Democratic Senatorial Campaign Committee
120 Maryland Ave NE
Washington, DC 20002

Senate Majority PAC
700 13th St NW Suite 600
Washington, DC 20005

Verified Complaintⁱ

This constitutes a Verified Complaint by the New Hampshire Republican Party ("Complainant") filed pursuant to 2 U.S.C. §437g(a)(1) against Jeanne Shaheen, a candidate for United States Senate in New Hampshire, Ms. Shaheen's principal campaign committee, Shaheen for Senate, and the Democratic Senatorial Campaign Committee ("DSCC") (Jeanne Shaheen, Shaheen for Senate, and DSCC are herein collectively referenced as "Shaheen") and the Senate Majority PAC, an independent expenditure political action committee (the "SuperPAC").

Based upon information and belief, Complainant files this Verified Complaint for an immediate investigation by the Federal Election Commission ("FEC" or "Commission") into the illegal coordination and contributions between Shaheen and the SuperPAC.ⁱⁱ

Public record makes clear, and an investigation into communications, including phone logs, conversations, emails and written documents, between the Shaheen campaign, the Democratic Senatorial Campaign Committee and the Senate Majority PAC will confirm, that Shaheen has illegally coordinated with the SuperPAC, and that Shaheen has accepted contributions, in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and Commission regulations.

Specifically, Shaheen and the Super PAC have engaged in coordinated political advocacy communications that amount to illegal contributions.

Background

On April 23, 2014, Shaheen published on her website an advertisement script used by the Super PAC. The Shaheen web page linked to seven pages of background material and to images of photographs of Shaheen. Further, the Democratic Senatorial Campaign Committee in a twitter post said "Important Message for NH: Koch Brothers are trying to buy Scott Brown a Senate seat." And it linked to the Shaheen campaign website message page, which said: "More attack ads. Paid for by the Koch Brothers and their special interest money..."

On April 26, 2014, the SuperPac published the following advertisement:

NARRATOR: Scott Brown's carrying some big oil baggage.

In Massachusetts, he voted to give oil companies big tax breaks - they make record profits, he collects over four hundred thousand in campaign contributions.

Now Brown's shopping for a new Senate seat. In oil rich Texas? The oil fields of North Dakota?

Nope, Brown wants to bring his big oil baggage to New Hampshire.

Scott Brown: out for himself and big oil at our expense.

Senate Majority PAC is responsible for the content of this advertising.

(herein referenced as the "Super PAC's Communication" or the "Communication").

Discussion

Shaheen and the SuperPAC violated the FECA by disseminating coordinated communications, resulting in illegal contributions. The FEC prohibits non-disclosed "dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate" as such constitutes an illegal contribution to that candidate. In order to enforce that prohibition, the FEC has devised a three pronged test, as follows:

1. **Payment Prong:** In order for the payment prong of the Commission's coordination regulations to be satisfied, an entity apart from the candidate or the candidate's campaign committee must pay, in whole or in part, for the communication. See 11 C.F.R. §109.21(a)(1). This prong is satisfied when an entity apart from the candidate or the candidate's campaign committee pays for a communication at issue. The SuperPac satisfied the payment prong by paying for the Communication.

2. **Content Prong:** In order for the content prong to be satisfied, the communication must be considered a public communication¹ and republishes, disseminates, or distributes candidate campaign materials. *See* 11 C.F.R. §109.21(c). The SuperPAC's Communication qualifies as a public communication. The Communication was publicly distributed in New Hampshire and such distribution began on or about April 26, 2014. In addition, the advertisement expressly advocates against Senator Brown. Accordingly, the SuperPAC's Communication satisfies the content prong.

3. **Conduct Prong:** In order for the conduct prong of the Commission's coordination regulations to be satisfied, one of five conduct standards must be met. Relevant here are the following three standards:

a. **Request or Suggestion:** The conduct prong is met if the person creating, producing, or distributing the communication does so at the request or suggestion of a candidate, authorized committee, or any agent thereof; or if the person paying for the communication suggests the creation, production, or distribution of the communication to the candidate, authorized committee, or any agents thereof, and the candidate assents to the suggestion. *See* 11 C.F.R. §109.21(d)(1).

b. **Material Involvement:** The conduct prong is met if a candidate, authorized committee, or any agents thereof, are "materially involved" in the decision making regarding the: (1) content of the communication; (2) intended audience; (3) means or mode of the communication; (4) specific media outlet used; (5) timing or frequency of the communication; or (6) size or prominence of a printed communication or duration of a communication by means of broadcast, cable, or satellite. *See* 11 C.F.R. §109.21(d)(2). Clearly, Shaheen was involved by providing the ad's script on a website in accordance with and in concert with a historic coordinated communication practice.

c. **Substantial Discussion:** The conduct prong is met if a communication is created, produced, or distributed after one or more substantial discussions between the individual paying for the communication (or the person's agents) and the candidate or candidate's opponent (or the candidate's agents). A discussion is "substantial" if information about the plans, projects, activities, or needs of the candidate that is material to the creation, production, or distribution of the communication is conveyed to the individual paying for the communication. *See* 11 C.F.R. §109.21(d)(3). Shaheen provided information material to the SuperPAC's Communication.

Shaheen's and the SuperPAC's respective and collective actions clearly satisfy all three of these standards. Shaheen for Senate and the DSCC effectively communicated via their websites and social media material information and requests and suggestions for the SuperPAC, in a historically recognizable practice, to create an illegal coordinate communication, including the republication of campaign material. Communication via electronic means are communication nonetheless. There is not an exception for electronic communications under the FECA in the context of coordinated communications.

Conclusion

¹ "Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.." 11 C.F.R. §100.26.

11 CFR § 109.23(a) provides, as follows: The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

In MUR 5879, the Commission reaffirmed its "longstanding approach that wholesale copying of candidate material constitutes republication...."²

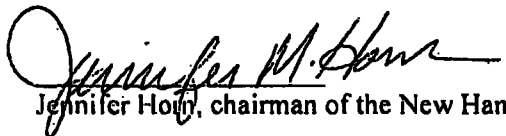
Relief Sought

Wherefore, the Commission should find reason to believe that Shaheen and the SuperPAC have violated 2 U.S.C. § 431 *et seq.*, including 2 U.S.C. § 441a as applied by 11 CFR §§ 109.21 and 109.23, and the reporting and disclosure requirements of 2 U.S.C. § 434, and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

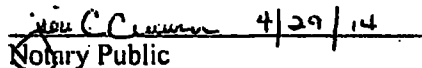
April 28, 2014

The aforementioned is correct and accurate to the best of my knowledge, information, and belief.

Respectfully Submitted,


Jennifer Horn, chairman of the New Hampshire Republican State Committee

SWORN TO AND SUBSCRIBED before me on this ^{29th}~~27th~~ day of April, 2014.


Notary Public

My commission expires:
JILL C. CURRAN, Notary Public
My Commission Expires October 16, 2018

² MUR 5879 (*Harry Mitchell for Congress et al.*), Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGinn and Matthew S. Petersen, at 5.

ii. Complainant respectfully requests that the Commission review all phone logs, emails, written documents and communications (via Internet postings or otherwise) between Jeanne Shaheen, Shaheen for Senate, the DSCC and the SuperPAC (including direct communications between Senator Shaheen and Senator Reid and/or their respective staff and agents).

ii. Complainant respectfully requests that the Commission review all phone logs, emails, written documents and communications (via Internet postings or otherwise) between Jeanne Shaheen, Shaheen for Senate, the DSCC and the SuperPAC (including direct communications between Senator Shaheen and Senator Reid and/or their respective staff and agents).